

Edward Fackenthal, Attorney for Defendant NRM Investment Company  
LAW OFFICE OF EDWARD FACKENTHAL  
One Montgomery Plaza, Suite 209  
Norristown, PA 19401  
Attorney I.D. 09462  
Tel. 610 279 3370  
Fax 610 279 0696  
[Edwardfackenthal@cs.com](mailto:Edwardfackenthal@cs.com)

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**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

BOARHEAD FARM AGREEMENT GROUP,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 02-3830
	:	
ADVANCED ENVIRONMENTAL	:	
TECHNOLOGY CORPORATION, ET. AL.	:	
	:	
Defendants.	:	

**NRM INVESTMENT COMPANY'S ANSWER TO  
4<sup>th</sup> AMENDED COMPLAINT**

Defense to Allegations

Defendant NRM Investment Company admits the allegations contained in paragraphs 5-7; 9-10; 12-14; 16-17; 20; the first three sentences, the first phrase of the fourth sentence ("The interim allocation does not bind any of the OU-1 Parties") and the fifth sentence of 18, 19, 23 and 163 (admit as to plaintiffs and to all OU 1 Agreement parties), and 24, insofar as the averments in these four paragraphs relate to OU-1); 25-28; 97; 101, 142 (incorporating paragraph); 144;

150; 152 (incorporating paragraph); 155 (incorporating paragraph); 158 (incorporating paragraph); 161, 164, and 166. Answering Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-4; 8, 11, 16, 21-24, 29-96, 103-141, and 146-149 or that they are not applicable to the answering defendant. Answering Defendant denies each and every other allegation contained in the Complaint.

### **AFFIRMATIVE DEFENSES**

NRM Investment Company (hereafter called “Answering Defendant”) without admitting any liability, hereby asserts the following defenses:

#### **FIRST AFFIRMATIVE DEFENSE**

Answering Defendant is not liable to the Plaintiffs because of insufficiency of process and/or insufficiency of service of process.

#### **SECOND AFFIRMATIVE DEFENSE**

The Complaint fails to state claims against Answering Defendant upon which relief may be granted.

#### **THIRD AFFIRMATIVE DEFENSE**

The claims set forth in the Complaint are barred, in whole or in part, by the statutes of limitation applicable to each claim.

#### **FOURTH AFFIRMATIVE DEFENSE**

Arguendo, but without admission, that Plaintiffs incurred response costs consistent with the National Contingency Plan and Spill Act, Answering Defendant is not responsible for any unreasonable costs incurred for the remedial actions taken at the Site.

#### **FIFTH AFFIRMATIVE DEFENSE**

The claims set forth in the Complaint are barred, in whole or in part, by the equitable doctrines of estoppel and waiver.

#### **SIXTH AFFIRMATIVE DEFENSE**

Because the harm, if any, is divisible and there is a reasonable basis for dividing the harm, joint and several liability may not be imposed.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs cannot recover costs, damages, or other relief for hazardous substances for which Answering Defendant did not make treatment or disposal arrangements or which it did not transport.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a cause of action under CERCLA insofar as the costs that have been incurred by Plaintiffs or that will be incurred by Plaintiffs: (a) are not response costs within the meaning of CERCLA or the Spill

Act or; (b) are not response costs that are consistent with the National Contingency Plan.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Answering Defendant are barred, in whole or in part, by the equitable doctrine of laches because the Plaintiffs' Complaint was instituted in an untimely fashion.

**TENTH AFFIRMATIVE DEFENSE**

This court lacks jurisdiction over the subject matter of this action.

**ELEVENTH AFFIRMATIVE DEFENSE**

The acts and omissions of persons other than Answering Defendant, over whom Answering Defendant had no control, were intervening or supervening causes of the injuries, costs and damages allegedly incurred by Plaintiffs. Further, Answering Defendant is not liable since the alleged releases or threats of release of a hazardous substance and the damages allegedly resulting therefrom were solely acts or omissions of third parties other than employees or agents of the answering Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

Upon information and belief, the acts or omissions of Answering Defendant, if any, did not proximately cause any of the response costs or damages of which

Plaintiffs now complains; therefore no liability exists on the part of Answering Defendant for any such response costs or damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to join a party necessary to complete an equitable adjudication of its claims.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Complaint in this matter fails to set forth with sufficient particularity the nature of alleged damages and response costs suffered by Plaintiffs, the date and circumstances in which such damages and response costs first manifested themselves, and the manner in which conduct of Answering Defendant allegedly caused such damages and response costs.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Arguendo, but without admission that any hazardous substance for which Answering Defendant may be liable was treated or disposed of at the Site, such are not present in and have not contributed to any release or threat of release at the Site.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Without admission that Plaintiffs are entitled to any recovery, any such recovery is barred by or must be apportioned under the doctrines of contributory or comparative fault or negligence.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiffs are not entitled to recover from Answering Defendant more than Answering Defendant's fair, equitable, and proportionate share, if any, of the costs and damages sought by Plaintiff or to otherwise recover from Answering Defendant more than the amount of such relief, if any, for which Answering Defendant is liable.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred insofar as Answering Defendant did not transport to or arrange for disposal at Boarhead ("the Site") substances that may be classified as "hazardous" under CERCLA or the Spill Act.

**NINETEENTH AFFIRMATIVE DEFENSE**

The Plaintiffs' claims are barred or limited because (1) Answering Defendant exercised due care in transporting any substances that might have been disposed of at the Site; (2) all conditions, injuries, costs, damages and expenses for which Plaintiff seeks to hold Answering Defendant liable were caused solely by the acts or omissions of third parties other than (a) employees or agents of Answering Defendant or (b) persons whose acts or omissions occurred in connection with a contractual relationship, existing directly or indirectly, with Answering Defendant; and (3) Answering Defendant took precautions against

foreseeable acts and omissions of any such third party and the consequences that foreseeably could result from such acts and omissions.

**TWENTIETH AFFIRMATIVE DEFENSE**

The Plaintiffs cannot recover from Answering Defendant more than Answering Defendant's fair, equitable and proportionate share of the costs, damages, expenses, and other relief sought by it.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The Plaintiffs may not recover from Answering Defendant any amounts that exceed the portion of costs or damages sought that are attributable to any release or threat of release of any hazardous substance allegedly disposed by Answering Defendant.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Answering Defendant is entitled to an offset against any liability on its part, if any, for the greatest of (1) any amounts actually paid by any person or entity heretofore or hereafter for any of the injuries, cost, damages and expenses alleged in the Plaintiff's Complaint; or (2) any amounts stipulated or otherwise agreed to in any release of or covenant not to sue any person or entity heretofore or hereafter for any of the injuries, costs, damages and expenses alleged in the Plaintiff's Complaint; or (3) the equitable share of the liability of any person or entity that heretofore has received, or hereafter receives, any release from liability or

covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the Plaintiff's Complaint.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The United States Constitution and applicable state law prevent the retroactive imposition of liability, joint and several or otherwise, for acts and omissions of Answering Defendant that were in compliance with applicable federal, state and local laws and regulations in effect at the time such acts and omission occurred.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The Plaintiff has no legal or equitable basis for seeking to impose joint and several liability upon Answering Defendant.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The volume and toxicity of any substance that might have been disposed by Answering Defendant to the Site are de minimis -- both in absolute terms and relative to the contributions of other responsible parties -- and therefore insufficient, as a matter of law and pursuant to the de minimis non curat lex doctrine, to give rise to any liability of Answering Defendant.



**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

The United States' claims are barred or limited insofar as they seek to recover costs, damages, expenses and any other type of relief incurred before the effective date of CERCLA on December 11, 1980.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant incorporates by reference all other applicable defenses set forth in the answers of the other answering defendants to the Plaintiff's Complaint and, further, will rely upon all defenses which become available during discovery or trial.

WHEREFORE, Answering Defendant prays that the Complaint be dismissed with prejudice, that costs be awarded against the Plaintiff, and that Answering Defendant be granted such other and further relief as the Court may deem just and proper

**COUNTERCLAIM OF NRM INVESTMENT COMPANY**

**AGAINST PLAINTIFF AND ITS INDIVIDUAL MEMBERS**

Answering Defendant here makes reference to the Fifth Case Management Order and reserves its rights to assert counter-claims and cross-claims at the appropriate time.

DATED: May 8, 2006

Respectfully submitted,  
Signature Code: EF3176  
Edward Fackenthal  
Attorney for NRM Investment Company

**CERTIFICATE OF SERVICE**

I, Edward Fackenthal, hereby certify that on this day a copy of Answering Defendant, NRM Investment Company's foregoing Answer to the Third Amended Complaint, Affirmative Defenses and Counterclaim was sent by first class mail and e-mail to each of the following:

**Counsel for Plaintiffs**

Glenn A. Harris, Esquire  
Ballard Spahr Andrews &  
Ingersoll, LLP  
Plaza 1000 – Suite 500, Main Street  
Voorhees, NJ 08043-4636  
(856) 761-3440  
(856) 761-9001 (Fax)  
[harrusg@ballardspahr.com](mailto:harrusg@ballardspahr.com)

**Counsel for Advanced Environmental Technology**

Thomas Sabino, Esquire  
Wolff & Samson  
5 Becker Farm Road  
Roseland, NJ 07068-1776  
(973) 740-0500  
(973) 436-4440 (Fax)  
[tsabino@wolffsamson.com](mailto:tsabino@wolffsamson.com)

**Counsel for Ashland Chemical Company**

Richard Biedrzycki, Esquire  
Phelan, Pettit & Biedrzycki  
Suite 1600, The North American Bldg.  
121 South Broad Street  
Philadelphia, PA 19107  
(215) 546-0500  
(215) 546-9444 (Fax)  
[rbiedrzycki@pp-b.com](mailto:rbiedrzycki@pp-b.com)

**Counsel for Carpenter Technology Corporation**

Lynn Wright, Esquire  
Edwards & Angell  
750 Lexington Avenue  
New York, NY 10022  
(212) 756-0215  
(888) 325-9169 (Fax)  
[lwright@ealaw.com](mailto:lwright@ealaw.com)

**Counsel for Flexible Circuits**

Seth v.d.H. Cooley, Esquire  
A. Nicole Friant, Esquire  
Duane Morris LLP  
Suite 4200, One Liberty Place  
Philadelphia, PA 19103-7396  
(215) 979-1000  
(215) 979-1020 (Fax)  
[secoley@duanemorris.com](mailto:secoley@duanemorris.com)  
[anfriant@duanemorris.com](mailto:anfriant@duanemorris.com)

**Counsel for Handy & Harman Tube Co.**

Melissa E. Flax, Esquire  
Carella, Byrne, Bain, Gilfillan, Cecchi,  
Stewart & Olstein  
Five Becker Farm Road – 3<sup>rd</sup> Fl.  
Roseland, NJ 07068-1739  
(973) 994-1700  
(973) 994-1744 (Fax)  
[mflax@carellabyrne.com](mailto:mflax@carellabyrne.com)

**Counsel for Merit Metals Products Corp.**

Stephen P. Chawaga, Esquire  
Monteverde, McAlee & Hurd  
One Penn Center at Suburban Station  
1617 John F. Kennedy Blvd., Suite 1500  
Philadelphia, PA 19103-1815  
(215) 557-2950  
(215) 557-2990/2991  
[schawaga@monteverde.com](mailto:schawaga@monteverde.com)

***Attorney for Rahns Specialty Metals, Inc.  
Techalloy Co., Inc. and Thomas Betts Corporation***

Andrew P. Foster, Esquire  
Drinker Biddle & Reath  
One Logan Square  
18th and Cherry Streets  
Philadelphia, PA 19103-6996  
(215) 988-2512  
(215) 988-2757 (Fax)  
Email: [andrew.foster@dbr.com](mailto:andrew.foster@dbr.com)

Signature Code: EF3176  
Edward Fackenthal

Dated: May 8, 2006